

THOMAS V. CHRISTOPHER (SBN#185928)
Thomas@ThomasChristopherLaw.com
THE LAW OFFICES OF THOMAS V. CHRISTOPHER
The Salesforce Tower
415 Mission Street, 37th Floor
San Francisco, California 94105
Telephone: (415) 659-1805

Attorney for Plaintiff
3TAPS, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

3TAPS, INC., a Delaware Corporation,

Plaintiff,

v.

LINKEDIN CORPORATION, a Delaware
Corporation,

Defendant.

Case No.: 18-cv-00855-EMC

**3TAPS, INC.'S AMENDED COMPLAINT
FOR DECLARATORY JUDGMENT
AGAINST LINKEDIN CORPORATION
UNDER 22 U.S.C. SECTION 2201 THAT
PLAINTIFF'S ACTIONS WILL NOT
VIOLATE THE COMPUTER FRAUD
AND ABUSE ACT (18 U.S.C. 1030); THE
CALIFORNIA COMPREHENSIVE
COMPUTER DATA ACCESS AND
FRAUD ACT; OR CONSTITUTE A
TRESPASS**

**Judge: Hon. Edward M. Chen
Trial Date: None Set**

1 Plaintiff 3taps, Inc. (“3taps” or “Plaintiff”), by and through its attorneys, brings this
2 Complaint against LinkedIn Corporation (“LinkedIn” or “Defendant”) and alleges as
3 follows:

4 **NATURE OF THE ACTION**

5 1. On August 14, 2017, the Honorable Edward M. Chen of this Court issued a
6 decision in the matter of hiQ Labs v. LinkedIn Corp., 273 F. Supp. 3d 1099 (N.D. Cal. Aug.
7 14, 2017), holding that hiQ Labs (“hiQ”) was entitled to a preliminary injunction on its
8 claims against LinkedIn, and specifically holding that LinkedIn’s assertion that the
9 Computer Fraud and Abuse Act, 18 U.S.C. Section 1030 (the “CFAA”), permitted
10 LinkedIn to prohibit the collection and use by hiQ of publicly-available materials from
11 LinkedIn’s webpage was contrary to law. Id. Consequently, Judge Chen held that
12 LinkedIn’s defense that the CFAA prohibited the use and collection of materials from its
13 website without LinkedIn’s consent was meritless. Id. This decision was subsequently
14 affirmed by the Ninth Circuit. The Ninth Circuit’s opinion was later vacated and remanded
15 by the United States Supreme Court for reconsideration in light of the opinion in Van
16 Buren v. United States 593 US _ (June 3, 2021). The matter remains pending before the
17 Ninth Circuit.

18 2. One of hiQ’s investors is Hard Yaka, Inc. (“Hard Yaka”). Hard Yaka is also
19 an investor in the Plaintiff herein, 3taps. Relying on Judge Chen’s August 14, 2017
20 decision in favor of hiQ, on January 16, 2018, 3taps directed a letter to LinkedIn’s counsel
21 informing LinkedIn of 3taps’ position that Judge Chen’s decision in hiQ Labs v. LinkedIn
22 Corp applied to 3taps, and that, as a result, 3taps intended to begin collecting and using
23 publicly-available data from LinkedIn’s website as hiQ had been doing.

24 3. By letter dated January 24, 2018, Jonathan Blavin, an attorney for LinkedIn,
25 responded to the January 16 letter and asserted that 3taps’ reliance on Judge Chen’s
26 decision was misplaced and that the CFAA prohibited 3taps from collecting and using data
27 from LinkedIn’s publicly-available webpage. This statement by Mr. Blavin was
28

1 completely inconsistent with Judge Chen's August 14, 2017, order and was designed to
2 prevent 3taps from taking advantage of that order.

3 4. By this action 3taps seeks against LinkedIn essentially the same declaratory
4 judgment that hiQ is seeking against LinkedIn in N.D. Cal. Case No. 3:17-cv-03301-EMC,
5 and specifically a declaration under the Declaratory Judgment Act, 28 U.S.C. Sections 2101
6 and 2202, that 3taps will not violate the CFAA by accessing and using publicly-available
7 information from LinkedIn's webpage. 3taps further seeks a declaration that such activities
8 will not violate California state law analogs to the CFAA or constitute an unlawful trespass.

9 **THE PARTIES**

10 5. Plaintiff 3taps is a Delaware Corporation with its principal place of business
11 in San Francisco, California. One of 3taps' investors is Hard Yaka, which is also an
12 investor in hiQ, the plaintiff in hiQ Labs v. LinkedIn Corp., N.D. Cal. Case No. 3:17-cv-
13 03301-EMC.

14 6. Defendant LinkedIn is a Delaware Corporation with its principal place of
15 business in Sunnyvale, California. Defendant LinkedIn is also the defendant in the matter
16 of hiQ Labs v. LinkedIn Corp., N.D. Cal. Case No. 3:17-cv-03301-EMC.

17 **JURISDICTION AND VENUE**

18 7. The Court has subject matter jurisdiction under 28 U.S.C. Section 1331
19 because Plaintiff's First Cause of Action seeks a declaratory judgment under 28 U.S.C.
20 Sections 2201 and 2202 that Plaintiff's proposed actions will not violate a federal statute, in
21 particular, the Computer Fraud and Abuse Act, 18 U.S.C. Section 1030.

22 8. Venue is proper in this District because LinkedIn maintains its corporate
23 headquarters within this District.

24 **PROCEDURAL HISTORY**

25 9. On August 13, 2021, LinkedIn filed a motion to dismiss the initial complaint
26 in this action. After a subsequent meet and confer, the parties agreed that, in the interests of
27 efficiency, 3taps would file an amended complaint rather than respond to the motion to
28 dismiss. As reflected in the written stipulation subsequently submitted to the Court on this

1 issue, 3taps' agreed to file an amended complaint with the express condition that doing so
2 was in no way a concession that the motion to dismiss was meritorious or that the initial
3 complaint required any amendment. 3taps now files this amended pleading by agreement
4 of the parties solely to conserve the resources of the parties and the Court by obviating the
5 issues raised in the motion to dismiss.

6 7 **FACTUAL ALLEGATIONS**

8 **The Parties**

9 10. 3taps is engaged in the business of using automated means to access and use
10 publicly-available facts from the internet and using, or providing to others for use, those
11 publicly-available facts in innovative and creative ways primarily designed to enhance user
12 experiences and safety. One of 3taps' investors is Hard Yaka, which is also an investor in
13 hiQ. hiQ is the plaintiff in a related action seeking declaratory relief against LinkedIn on
14 the same grounds asserted in this action: hiQ Labs v. LinkedIn Corp, N.D. Cal. Case No.
15 3:17-cv-03301-EMC.

16 11. Defendant LinkedIn claims to be the world's largest online professional
17 network, with more than 546 million users worldwide. Defendant LinkedIn's website is
18 literally a treasure trove of publicly-available information that would be extremely valuable
19 to data scrapers such as 3taps.

20 **The Dispute Leading to This Action**

21 12. On May 23, 2017, LinkedIn sent a "cease and desist" letter to hiQ demanding
22 that hiQ "cease and desist" from collecting and using facts and information from
23 LinkedIn's website. The letter stated LinkedIn's position that, by collecting and using facts
24 and information from LinkedIn.com, hiQ was violating the CFAA and other laws.

25 13. On May 31, 2017, hiQ's counsel responded to LinkedIn's cease and desist
26 letter by stating that LinkedIn's actions were threatening hiQ's business and efforts to
27 obtain financing.
28

1 14. When LinkedIn failed to respond to that letter, on June 7, 2017, hiQ filed an
2 action against LinkedIn in the United States District Court for the Northern District of
3 California: hiQ Labs v. LinkedIn Corp., (N.D. Cal. Case No. 3:17-cv-03301 EMC). That
4 action sought, among other things, a declaration from the Court that hiQ would not violate
5 the CFAA by accessing and using publicly-available facts and information on LinkedIn's
6 website.

7 15. In connection with a subsequent motion for a preliminary injunction by hiQ,
8 the Court held that LinkedIn's assertion that hiQ would violate the CFAA by accessing and
9 using publicly-available facts and information from LinkedIn's webpage was without merit
10 and contrary to law. hiQ Labs v. LinkedIn Corp., 273 F. Supp. 3d 1099. Specifically,
11 Judge Chen broadly ruled that the CFAA did not permit LinkedIn to prohibit the access and
12 use by hiQ of materials that were publicly-available on LinkedIn's webpage. Id. The case
13 remains pending before Judge Chen while the order on the preliminary injunction is on
14 appeal to the Ninth Circuit Court of Appeals.

15 16. In early 2018, in reliance on Judge Chen's decision against LinkedIn, 3taps
16 determined to begin using automated means to access and use publicly-available facts and
17 information on LinkedIn's webpage just as hiQ had been doing.

18 17. Expressly relying on Judge Chen's holding that LinkedIn could not use the
19 CFAA to block hiQ from accessing and using LinkedIn's publicly-available facts and
20 information, and in the interest of being open and transparent about its intentions, on
21 January 16, 2018, 3taps informed LinkedIn's counsel of its position that Judge Chen's
22 decision in hiQ Labs v. LinkedIn Corp would apply to 3taps and that, as a result, 3taps
23 intended to begin collecting and using publicly-available data from LinkedIn's website.

24 18. On January 24, 2018, LinkedIn's attorney responded to the January 16 letter
25 and asserted that 3taps' basis for relying on Judge Chen's decision was misplaced and that
26 the CFAA prohibited 3taps from collecting and using data from LinkedIn's publicly-
27 available webpage. This contention by LinkedIn appeared to directly contradict the
28 substance of Judge Chen's prior ruling against LinkedIn on this very same issue.

1 24. 3taps seeks a declaration that it will not be in violation of the CFAA if it
2 proceeds to access and use publicly-available facts and information from LinkedIn's
3 webpage.

4
5 **SECOND CAUSE OF ACTION**

6 **(Declaratory Judgment That 3taps Will Not Violate the California**
7 **Comprehensive Computer Data Access and Fraud Act, Penal Code Section 502,**
8 **By Accessing and Using Publicly-Available Data on LinkedIn's Website)**

9 25. 3taps hereby incorporates by reference the allegations of the preceding
10 paragraphs as though fully set forth herein.

11 26. The Declaratory Judgment Act, 22 U.S.C. Section 2201, permits courts to
12 declare the rights of parties where there exists an actual case or controversy between them.

13 27. An actual case or controversy exists between 3taps and LinkedIn. 3taps has
14 given notice to LinkedIn that it intends to begin accessing and using publicly-available
15 facts and information on LinkedIn's webpage and LinkedIn has responded by claiming that
16 any such activity by 3taps would violate a federal statute, and specifically, the CFAA, 18
17 U.S.C. Section 1030.

18 28. In its motion to dismiss this action filed August 13, 2021, LinkedIn suggested
19 that 3taps' proposed data scraping activity could also violate state law data scraping
20 analogs to the CFAA, implying that 3taps' scraping would violate the California
21 Comprehensive Computer Data Access and Fraud Act, Penal Code Section 502.

22 29. 3taps therefore seeks a declaration that it will not be in violation of the
23 California Comprehensive Computer Data Access and Fraud Act, Penal Code Section 502
24 if it proceeds to access and use publicly-available facts and information from LinkedIn's
25 webpage.

THIRD CAUSE OF ACTION

(Declaratory Judgment That 3taps Will Not Commit A Trespass By Accessing and Using Publicly-Available Data on LinkedIn's Website)

30. 3taps hereby incorporates by reference the allegations of the preceding paragraphs as though fully set forth herein.

31. The Declaratory Judgment Act, 22 U.S.C. Section 2201, permits courts to declare the rights of parties where there exists an actual case or controversy between them.

32. An actual case or controversy exists between 3taps and LinkedIn. 3taps has given notice to LinkedIn that it intends to begin accessing and using publicly-available facts and information on LinkedIn's webpage and LinkedIn has responded by claiming that any such activity by 3taps would violate a federal statute, and specifically, the CFAA, 18 U.S.C. Section 1030.

33. In its motion to dismiss this action filed August 13, 2021, LinkedIn implied that 3taps' proposed data scraping activity could also create liability for the tort of trespass.

34. 3taps therefore seeks a declaration that it will not commit a trespass if it proceeds to access and use publicly-available facts and information from LinkedIn's webpage.

PRAYER FOR RELIEF

Wherefore, 3taps prays for judgment against Defendant LinkedIn as follows:

- A. For a declaratory judgment that 3taps will not be in violation of the CFAA, the California CDAFA or commit a trespass if it proceeds to access and use publicly-available facts and information from LinkedIn's webpage.
- B. For 3taps' costs and attorney's fees, if permitted by law;
- C. For such other relief as the Court determines just and proper.

1 DATED: October 5, 2021

2 THE LAW OFFICES OF THOMAS V.
3 CHRISTOPHER

4 By: /s/ Thomas Christopher
5 THOMAS CHRISTOPHER
6 thomas@thomaschristopherlaw.com
7 Attorney for Plaintiff
8 3TAPS, INC.
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28